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To establish procedures to resolve undercharge claims by motor carriers based on negotiated but unfiled or illegal tariff rates, to ensure the proper, timely, and accurate filing and enforcement of motor carrier rates in tariffs, to reaffirm the requirement for written transportation contracts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 6, 1993

Mr. LIPINSKI introduced the following bill; which was referred jointly to the Committees on Public Works and Transportation, the Judiciary, and Education and Labor

A BILL

To establish procedures to resolve undercharge claims by motor carriers based on negotiated but unfiled or illegal tariff rates, to ensure the proper, timely, and accurate filing and enforcement of motor carrier rates in tariffs, to reaffirm the requirement for written transportation contracts, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Undercharge Settle-
5 ment and Amnesty Act of 1993”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) over the past decade there have been ongoing
4 disputes between shippers of freight, on the one
5 hand, and motor carriers or their representatives in
6 bankruptcy and creditors, on the other hand, regarding
7 the proper resolution of claims for collection of
8 freight charges for transportation services that represent
9 the difference between filed tariff rates and
10 rates that were negotiated with shippers for which
11 tariffs were not filed, not timely filed, or not legally
12 filed with the Interstate Commerce Commission as
13 required by law or for which lawful contract carriage
14 did not result;

15 (2) such disputes continue to remain unresolved
16 and have burdened the dockets of the Federal
17 courts, consumed the time and resources of the
18 Interstate Commerce Commission, caused shippers
19 and the motor carrier industry to engage in seemingly
20 endless debate and litigation, and prevented or
21 delayed the collection and distribution of the assets
22 of motor carrier bankruptcy estates to creditors, including
23 pension funds and former employees of the
24 bankrupt motor carriers;

25 (3) in order to resolve these disputes and allow
26 the proper administration of motor carrier bank-

1 ruptcy estates through the prompt collection of as-
 2 sets and distribution of funds to creditors, it is in
 3 the public interest to establish a procedure authoriz-
 4 ing persons to resolve these claims without fear of
 5 violating the Interstate Commerce Act and without
 6 the allocation of fault;

7 (4) the interests of motor carriers, shippers,
 8 and the public are best served by the requirement
 9 that the rates, charges, rules, and classifications of
 10 motor common carriers continue to be filed with the
 11 Interstate Commerce Commission and made avail-
 12 able to the public in tariffs; and

13 (5) the filed rate doctrine continues to be a
 14 valid principle governing all interstate common car-
 15 riage conducted in the United States.

16 **SEC. 3. PROCEDURE FOR RESOLVING CLAIMS INVOLVING**
 17 **UNDERCHARGE CLAIMS.**

18 Section 10701 of title 49, United States Code, is
 19 amended by adding at the end the following:

20 “(f) PROCEDURE FOR RESOLVING CLAIMS INVOLV-
 21 ING UNDERCHARGE CLAIMS.—

22 “(1) IN GENERAL.—

23 “(A) ELECTION AUTHORITY.—When an
 24 undercharge claim is made by a motor carrier
 25 of property (other than a household goods car-

rier), by a nonhousehold goods freight forwarder, or by a party representing or succeeding to the rights of such a carrier or forwarder (hereinafter in this subsection such a carrier, freight forwarder, or party is referred to as a 'carrier claimant'), the person against whom the claim is made may elect to satisfy such claim in accordance with the procedures set forth in paragraph (2).

“(B) UNDERCHARGE CLAIM DEFINED.—
For the purposes of this subsection, the term 'undercharge claim' means a claim for any undercharges made by a carrier claimant arising out of a rate, charge, classification or rule agreed upon by the motor carrier or nonhousehold goods freight forwarder and a shipper that either allegedly was not legally or timely filed in a tariff with the Commission or, in the case of a claim of contract carriage, where the contract or services performed thereunder did not constitute valid contract carriage, and where a shipper tendered freight and made payment to the motor carrier in reasonable reliance upon the agreed upon rate, charge, classification, or rule.

1 “(C) JURISDICTION OF COURTS.—The dis-
2 trict courts of the United States shall have ex-
3 clusive jurisdiction over an undercharge claim.

4 “(D) LIMITATION ON APPLICABILITY.—
5 This subsection does not apply to a claim based
6 upon the failure of a shipper to pay a tariff rate
7 where no undercharge claim is involved.

8 “(E) UNDERCHARGE DEFINED.—For the
9 purposes of this subsection, the term “under-
10 charge” means the difference between the al-
11 leged legally applicable tariff rate and the rate
12 paid by the shipper when the rate paid is less
13 than the tariff rate.

14 “(2) PROCEDURE.—

15 “(A) 35 PERCENT PAYMENT.—Subject to
16 subparagraph (B) and paragraphs (3) and (4),
17 the person against whom an undercharge claim
18 has been made may elect to satisfy such claim
19 by payment of 35 percent of the undercharge.

20 “(B) DEADLINE FOR ELECTION.—The
21 election must be made no later than the 90th
22 day after the carrier claimant has notified the
23 person from whom additional freight charges
24 are sought of the provisions of this subsection
25 and the person’s right of election thereunder.

1 “(C) EFFECTIVE PERIOD.—The election to
2 satisfy undercharge claims provided for in this
3 paragraph shall apply to all undercharge claims
4 pending as of the date of the enactment of this
5 subsection and to all undercharge claims arising
6 from transportation shipments tendered on or
7 before the last day of the 12-month period be-
8 ginning on such date of enactment.

9 “(D) EFFECT OF CLAIM SATISFACTION.—
10 Satisfaction of a claim under this paragraph
11 shall be binding on the parties, and the parties
12 with respect to the claim shall not be subject to
13 chapter 119 of this title, relating to civil and
14 criminal penalties.

15 “(3) EFFECT OF NONELECTION.—

16 “(A) PRESERVATION OF EXISTING RIGHTS
17 AND REMEDIES.—In the event a shipper or per-
18 son against whom an undercharge claim has
19 been made does not elect to use the procedure
20 established under paragraph (2), the shipper or
21 person may pursue all existing rights and rem-
22 edies under this title.

23 “(B) DETERMINATION OF RATE REASON-
24 ABLENESS.—In the case of an undercharge
25 claim referred to in subparagraph (A), if the

1 shipper or person asserts a counterclaim
2 against a carrier claimant arising out of the un-
3 dercharge claim on the ground of rate reason-
4 ableness, a court may stay proceedings so as to
5 permit the shipper or such other person to file
6 a complaint with the Commission challenging
7 the reasonableness of the rate being sought. In
8 the event the court permits the filing of such a
9 complaint, the Commission shall issue a ruling
10 thereon and report it to the court within 6
11 months of the date the complaint is filed unless
12 the court further extends its stay for an addi-
13 tional specified period. If the rate sought to be
14 collected is found unreasonable, the Commission
15 shall determine a maximum reasonable rate.

16 “(C) ATTORNEYS’ FEES.—If a carrier
17 claimant ultimately prevails in recovering any
18 part of an undercharge claim referred to in sub-
19 paragraph (A) following litigation of a rate rea-
20 sonableness complaint, the court shall award
21 such carrier claimant reasonable attorneys’ fees
22 and costs of litigation.

23 “(4) DEFENSE TO UNDERCHARGE CLAIM.—

24 “(A) IN GENERAL.—Notwithstanding
25 paragraphs (1), (2), and (3), a person shall not

1 be liable for an undercharge claim made by a
2 carrier claimant if such person is a small-busi-
3 ness concern, a charitable organization, or the
4 cargo involved in the claim is recyclable mate-
5 rials, as defined in section 10733.

6 “(B) WAIVER.—The defense to liability
7 granted under subparagraph (A) shall be
8 waived unless asserted within 90 days of receipt
9 from the carrier claimant of notice of the provi-
10 sions of this subsection.

11 “(C) DEFINITIONS.—For purposes of this
12 paragraph—

13 “(i) the term ‘small-business’ concern
14 means a business whose average gross an-
15 nual revenues as evidenced by its Federal
16 income tax returns for its last 3 years of
17 operation were less than \$5,000,000; and

18 “(ii) the term ‘charitable organization’
19 means any organization which is described
20 in section 501(c)(3) of the Internal Reve-
21 nue Code of 1986 and exempt from tax
22 under section 501(a) of such Code.

23 “(5) BURDEN OF PROOF.—In the case of any
24 claim to which the reasonableness of the rate filed
25 before, on, or after the date of the enactment of this

1 subsection with the Commission is in question, the
2 Commission shall determine the reasonableness of
3 such rate for shipments of property made before, on,
4 or after such date of enactment in accordance with
5 the criteria set forth in subsection (e). The com-
6 plainant shall have the burden of proof in any action
7 challenging the reasonableness of such a rate. For
8 undercharge claims based upon shipments trans-
9 ported prior to January 1, 1992, the carrier claim-
10 ant shall have the burden of presenting evidence
11 supporting the reasonableness of its filed rate or a
12 maximum reasonable rate.

13 “(6) PRESERVATION OF DUTY TO FILE
14 RATES.—Except as authorized in paragraphs (2)
15 and (8) of this subsection, nothing in this subsection
16 shall relieve a motor carrier or nonhousehold goods
17 freight forwarder of the duty to file and adhere to
18 its rates, rules, and classifications as required by
19 sections 10761 and 10762.

20 “(7) CUSTOMER ACCOUNT CODE.—

21 “(A) LIMITATION ON ASSERTION OF UN-
22 DERCHARGE CLAIM.—Notwithstanding any
23 other provision in this subsection, motor car-
24 riers or nonhousehold goods freight forwarders
25 that transported property in interstate or for-

1 eign commerce on or after July 1, 1992, pursu-
2 ant to a certificate or license issued by the
3 Commission shall not be permitted to assert
4 any undercharge claim against any person
5 based upon the illegality of a tariff filed with
6 the Commission containing a customer account
7 code.

8 “(B) DELETION.—Any tariff which does
9 not identify the recipient of the coded customer
10 account code rate shall be deleted by the motor
11 carrier from its tariff within 90 days of the
12 date of the enactment of this subsection.

13 “(C) CUSTOMER ACCOUNT CODE DE-
14 FINED.—For purposes of this subsection, the
15 term ‘customer account code’ means a rate filed
16 with the Commission in a tariff of a motor car-
17 rier or nonhousehold goods freight forwarder in
18 code form for the benefit of an unnamed ship-
19 per or other person.

20 “(8) ENFORCEABILITY OF CLAIMS.—

21 “(A) PRE-EFFECTIVE DATE.—Notwith-
22 standing any provision of this title, any settle-
23 ment or payment of an undercharge claim en-
24 tered into prior to the effective date of this sub-

1 section shall be deemed binding, enforceable,
2 and not contrary to law.

3 “(B) POST-EFFECTIVE DATE.—Any settle-
4 ment of an undercharge claim on or after the
5 effective date of this subsection shall be bind-
6 ing, enforceable, and not contrary to law only if
7 such settlement is accomplished in conformity
8 with this subsection or is approved by a court
9 of competent jurisdiction.

10 “(9) COUNTERCLAIMS AND SETOFFS.—Not-
11 withstanding any other provision of this title or any
12 defense provided for in this subsection, motor car-
13 riers or nonhousehold goods freight forwarders may
14 assert undercharge claims as counterclaims or
15 setoffs to any action commenced or claim made by
16 a shipper unless the shipper has complied with the
17 provisions of paragraphs (2)(A) and (2)(B).”.

18 **SEC. 4. STATUTE OF LIMITATIONS.**

19 (a) MOTOR CARRIER UNDERCHARGES.—Section
20 11706(a) of title 49, United States Code, is amended by
21 striking the period at the end and inserting the following:
22 “; except that a common carrier providing transportation
23 or service subject to the jurisdiction of the Commission
24 under subchapter II of chapter 105 of this title—

1 “(1) must begin, within 24 months after the
2 claim accrues, a civil action to recover charges for
3 such transportation or service if such transportation
4 or service is provided by the carrier on or after the
5 date of the enactment of the Undercharge Settle-
6 ment and Amnesty Act of 1993 and before the date
7 that is 1 year after such date of enactment; and

8 “(2) must begin such a civil action within 18
9 months after the claim accrues if such transpor-
10 tation or service is provided by the carrier on or
11 after the date that is 1 year after such date of en-
12 actment.”.

13 (b) MOTOR CARRIER OVERCHARGES.—Section
14 11706(b) is amended by striking the period at the end
15 of the first sentence and inserting the following: “; except
16 that a person must begin within 24 months after the claim
17 accrues a civil action to recover overcharges from a carrier
18 subject to the jurisdiction of the Commission under sub-
19 chapter II of chapter 105 of this title for transportation
20 or service taking place on or after the date of the enact-
21 ment of the Undercharge Settlement and Amnesty Act of
22 1993 and before the date that is 1 year after such date
23 of enactment and, for the transportation or service taking
24 place on or after the date that is 1 year following such

1 date of enactment, a person must begin such a civil action
2 within 18 months after the claim accrues.”.

3 (c) CONFORMING AMENDMENT.—Section 11706(d) is
4 amended—

5 (1) by striking “The three-year period” each
6 place it appears and inserting “A limitation period”;
7 and

8 (2) by striking “that 3-year” and inserting
9 “that limitation”.

10 **SEC. 5. TARIFF RECONCILIATION RULES FOR MOTOR COM-**
11 **MON CARRIERS OF PROPERTY.**

12 (a) IN GENERAL.—Chapter 117 of title 49, United
13 States Code, is amended by adding at the end the follow-
14 ing new section:

15 **“§ 11712. Tariff reconciliation rules for motor com-**
16 **mon carriers of property**

17 “(a) IN GENERAL.—Subject to Commission review
18 and approval, motor carriers subject to the jurisdiction of
19 the Commission under subchapter II of chapter 105 of
20 this title and shippers may, within 6 months after the date
21 of the shipment, resolve, by mutual consent in a writing
22 signed by both parties and retained by a motor carrier
23 for 3 years, overcharge and undercharge claims resulting
24 from billing errors or incorrect tariff provisions arising
25 from the inadvertent failure to properly and timely file and

1 maintain agreed upon rates, rules, or classifications in
 2 compliance with sections 10761 and 10762 of this title.
 3 Resolution of such claims among the parties shall not sub-
 4 ject any party to the penalties of chapter 119 of this title.

5 “(b) LIMITATION ON STATUTORY CONSTRUCTION.—
 6 Nothing in this section shall be construed to relieve a
 7 motor carrier of the duty to file and adhere to its rates,
 8 rules, and classifications as required in sections 10761 and
 9 10762, except as provided in subsection (a) of this section.

10 “(c) INSTITUTION OF RULEMAKING PROCEEDING.—
 11 Within 90 days after the date of the enactment of this
 12 section, the Commission shall institute a proceeding to es-
 13 tablish rules pursuant to which the tariff requirements of
 14 sections 10761 and 10762 of this title shall not apply
 15 under circumstances described in subsection (a) of this
 16 section.”.

17 (b) CONFORMING AMENDMENT.—This analysis for
 18 chapter 117 of such title is amended by adding at the end
 19 the following:

“11712. Tariff reconciliation rules for common carrier of property.”.

20 **SEC. 6. RATES AND CONTRACTS OF MOTOR CONTRACT**
 21 **CARRIERS.**

22 Section 10702 of title 49, United States Code, is
 23 amended by adding at the end the following:

24 “(c) CONTRACTS OF MOTOR CONTRACT CARRIERS.—

1 “(1) GENERAL RULE.—A motor contract car-
2 rier shall enter into a written agreement, separate
3 from the bill of lading, for each contract of carriage.

4 “(2) CONTENTS OF AGREEMENT.—The written
5 agreement shall, at a minimum—

6 “(A) identify the parties thereto;

7 “(B) commit the shipper to tender and the
8 carrier to transport a series of shipments;

9 “(C) contain the contract rate or rates for
10 the transportation service to be or being pro-
11 vided; and

12 “(D)(i) provide for the assignment of
13 motor vehicles for a continuing period of time
14 for the exclusive use of the shipper; or

15 “(ii) provide that the service is designed to
16 meet the distinct operational needs of the ship-
17 per.

18 “(3) PERIOD OF CONTRACT RETENTION.—All
19 written agreements entered into by a motor contract
20 carrier shall be retained by the carrier while in effect
21 and for a minimum period of 3 years thereafter and
22 made available to the Commission upon request.
23 Failure by a motor carrier to so retain its written
24 agreement with a shipper shall not, however, subject
25 such shipper to any undercharge or other liability.

1 “(4) RANDOM AUDITS.—The Commission shall
2 conduct periodic random audits to ensure that motor
3 carriers are complying with this subsection and are
4 adhering to the rates set forth in their agreements.”.

5 **SEC. 7. TARIFF FILING ENFORCEMENT.**

6 Subchapter IV of chapter 107 of title 49, United
7 States Code, is amended by adding at the end the follow-
8 ing:

9 **“§ 10767. Tariff filing enforcement**

10 “Not later than 90 days after the date of the enact-
11 ment of this section, the Commission shall issue final reg-
12 ulations prohibiting the filing of tariffs under this chapter
13 by motor carriers that fail to state clearly and concisely
14 the actual rates or charges for a transportation service or
15 a methodology for determining the rates or charges (such
16 as range and trigger tariffs) or that misapply freight clas-
17 sifications.”.

18 **SEC. 8. BILLING AND COLLECTION PRACTICES.**

19 (a) IN GENERAL.—Subchapter IV of chapter 107 of
20 title 49, United States Code, is further amended by adding
21 at the end the following:

22 **“§ 10768. Billing and collection practices**

23 “Not later than 90 days after the enactment of this
24 section, the Commission shall issue final regulations pro-
25 hibiting a motor carrier subject to the jurisdiction of the

1 Commission under subchapter II of chapter 105 of this
2 title—

3 “(1) from giving a reduction in a rate set forth
4 in its tariff or contract to any person other than the
5 person who is paying for the transportation service
6 and is indicated on the original bill of lading as the
7 person paying for such service; and

8 “(2) from failing to insert that reduction in the
9 rate on the freight bill or other document presented
10 for payment.

11 It shall be a violation of chapter 119 for any carrier or
12 person knowingly to pay, accept, or solicit a reduced rate
13 in violation of this section. It shall also be a violation of
14 chapter 119 for any carrier or person knowingly to provide
15 false or misleading information about the actual rates or
16 charges for the transportation service in a freight bill or
17 document presented for payment.”.

18 (b) CHAPTER ANALYSIS CONFORMING AMEND-
19 MENT.—The analysis for such subchapter is amended by
20 adding at the end the following:

“10767. Tariff filing enforcement.

“10768. Billing and collection practices.”.

21 **SEC. 9. REPORT ON ELECTRONIC TARIFF FILING.**

22 Within 1 year after the date of the enactment of this
23 Act, the Interstate Commerce Commission shall submit a
24 report to Congress on the feasibility, costs, and benefits

1 of implementation of a system for electronic tariff filing
2 of motor common carrier rates and charges and a program
3 for implementation thereof.

4 **SEC. 10. PRIORITY PAYMENTS IN CASES INVOLVING THE**
5 **DEBTOR'S RECOVERY OF UNDERCHARGES.**

6 Paragraphs (3) and (4) of section 507(a) of title 11,
7 United States Code, are each amended by adding at the
8 end the following:

9 “The limitations specified in subparagraphs (A) and
10 (B) shall not apply in a case in which the debtor is
11 a motor carrier (as defined in section 10102 of title
12 49) that asserts a right against any person or gov-
13 ernmental unit to a recovery of an undercharge (as
14 defined in section 10701(f) of title 49).”.

15 **SEC. 11. PROTECTION FOR PENSION FUND OBLIGATIONS**
16 **OF MOTOR CARRIERS.**

17 Part 1 of subtitle D of title IV of the Employee Re-
18 tirement Income Security Act of 1974 is amended by add-
19 ing at the end the following:

20 **“SEC. 4226. LIEN FOR LIABILITY IN FAVOR OF MOTOR CAR-**
21 **RIER PLANS.**

22 “(a) IN GENERAL.—If any motor carrier that is sub-
23 ject to the jurisdiction of the Interstate Commerce Com-
24 mission under subtitle IV of title 49, United States Code,
25 is a debtor in a case under title 11, United States Code,

1 and is liable to a multiemployer plan under section 4219
2 neglects or refuses to pay, after demand has been made
3 by the plan in accordance with section 4219(b)(1) or after
4 a default described in section 4219(c)(5), any installment
5 payment or any amount of accelerated withdrawal liability,
6 there shall be a lien in favor of the plan in the amount
7 of such payment or amount on all undercharges, as de-
8 fined in section 10701(f) of title 49, United States Code,
9 which such motor carrier then has or may have in the fu-
10 ture.

11 “(b) TIMING OF LIEN.—The lien imposed by sub-
12 section (a) arises on the date that any installment pay-
13 ment under section 4219(c)(1)(A) was due but not paid
14 or on the date that default occurs under section
15 4219(c)(5).

16 “(c) ADMINISTRATION AND ENFORCEMENT OF
17 LIEN.—For all purposes related to the administration and
18 enforcement of the lien established by subsection (a), the
19 provisions applicable to liens in favor of the corporation
20 under sections 4068(c) and 4068(d) shall apply to such
21 lien in connection with the multiemployer plan in the same
22 manner and to the same extent as such provisions apply
23 to liens in connection with the corporation.

24 “(d) RELEASE OF SUBORDINATION.—The lien estab-
25 lished under subsection (a) may be released or subordi-

1 nated, in whole or in part, if and only if the plan, in its
2 judgment, issues a certification that such release or such
3 subordination will ultimately increase the likelihood of the
4 plan's collection of the withdrawal liability obligations
5 which are the subject of the lien.".

6 (b) CLERICAL AMENDMENT.—The table of contents
7 in section 1 of such Act is amended by inserting after the
8 item relating to section 4225 the following new item:

“Sec. 4226. Lien for liability in favor of motor carrier plans.”.

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